

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates For Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”), pursuant to the Public Notice released on August 30, 2012 (DA 12-1416), hereby respectfully submits its comments opposing the petition for waiver filed by TDS Telecommunications Corp. (“TDS”) in the above-captioned proceedings. TDS has requested a waiver of Section 51.917(c) of the Commission’s Rules to “include within its Base Period Revenues unpaid amounts billed to Halo Wireless, Inc....for intrastate usage during Fiscal Year 2011...thereby rendering those amounts eligible for recovery pursuant to the Commission’s eligible recovery

mechanism.”¹ As discussed below, contributors to the USF should not be forced to make TDS whole by covering for access invoices unpaid by Halo. TDS has not demonstrated any unique circumstances which would justify the instant waiver, and grant of its requested relief would either draw support away from other USF recipients or increase the size of the CAF recovery fund. None of these outcomes is in the public interest, and TDS’ petition should accordingly be denied.

In the *ICC/USF Transformation Order*, the Commission adopted a generous revenue recovery mechanism for rate-of-return ILECs which “provides more certainty and predictability than exists today,” and allows the ILEC to recover baseline revenue not earned from other sources from the CAF.² Under the Eligible Recovery mechanism, rate-of-return LECs are to compute their ICC replacement CAF support based on their 2011 base period revenues received by March 31, 2012.³ The decision to use received rather than billed revenues is consistent with the Commission’s emphasis on constraining the size of the USF and limiting the burden on USF contributors. To allow TDS to use billed rather than received revenues to increase its CAF subsidy threatens the Commission’s commitment to constraining the size of the USF, and runs afoul of its unambiguous assertion that the recovery mechanism is not to be used to ensure revenue neutrality.⁴

¹ TDS Petition, p. 2.

² *Connect America Fund, et al.*, 26 FCC Rcd 17663 (2011), paras. 891 and 896 (“*ICC/USF Transformation Order*”). In addition to the CAF, ILECs are allowed to true up revenue numbers based on their actual minutes of use (which have been declining over the past several years), and to recover ARC revenue from their customers.

³ See Section 51.917(c)(iii) of the Commission’s Rules. A similar rule was adopted for price cap LECs.

⁴ As the Commission correctly stated, it “has no legal obligation to ensure that carriers recover access revenues lost as a result of reform, absent a showing of a taking” (*ICC/USF Transformation Order* at para. 924). TDS admits (Petition, p. 15) that the Halo situation does not involve a takings claim.

Moreover, TDS has failed to meet one of the standards required to justify grant of a waiver – demonstration of unique circumstances.⁵ Unpaid invoices affect all service providers, including those who are not eligible to receive CAF subsidies.⁶ TDS is only one of many carriers affected by Halo’s actions, or indeed by any customer’s refusal to pay assessed charges. Thus, the existence of unpaid and perhaps unrecoverable charges on any provider’s financial books is hardly a unique circumstance which would warrant a waiver of the Commission’s rules.

TDS’ waiver petition cannot be considered in a vacuum. The USF budget is fixed.⁷ If more dollars flow to TDS – and the public record does not even reflect the total dollar amount at issue here – then fewer dollars will be available for universal service purposes. To exacerbate the matter, granting TDS’ waiver petition is not a one-time impact – including the disputed amounts in TDS’ base period revenues resonates throughout the life of the Eligible Recovery fund, affecting the distribution of support in TDS’ favor (and against other USF recipients) for as long as the recovery fund mechanism remains in effect. It is simply inequitable, given the lack of unique circumstances, the already generous nature of the recovery mechanism, and the policy of not using the USF to ensure revenue neutrality, to “re-slice” the USF pie in TDS’ favor.

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁶ Sprint, for example, reserves hundreds of millions of dollars per year for anticipated uncollectible revenues, none of which is recoverable through any sort of USF guarantee.

⁷ *See, e.g., ICC/USF Transformation Order* at para. 18, footnote omitted (“We establish...a firm and comprehensive budget for the high-cost programs within USF”). Of course, the possibility of increasing the USF budget to accommodate TDS’ petition is entirely beyond the bounds of a waiver proceeding and may not even be considered in such a proceeding.

Finally, the Commission established a “Total Cost and Earnings Review,” through which a carrier may petition the Commission to “... request additional support.”⁸ If TDS does not believe its Eligible Recovery is sufficient, it can avail itself of this option. It simply is not in the public interest to grant TDS’ requested relief when other options exist that would better evaluate the need for the additional subsidization TDS has requested.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

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⁸ *ICC/USF Transformation Order* at para. 924.